No. 10-789

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IN THE

Supreme Court of the United States

PATRICK SHAWN BARRETT *et al.*,

Petitioners,

v.

COUNTY OF VENTURA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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I. INTRODUCTION

The plaintiffs have petitioned the Supreme Court for a Writ of Certiorari to the California Second District Court of Appeal (hereinafter "petition"), regarding said appellate rulings, including two "questions presented" and a secondary appellate error. The petitioners here raised specific arguments based on the rulings of the Court of Appeal. The respondents, however, almost completely fail to address *these specific arguments* - and instead present what is thus a largely irrelevant list of "respondent questions presented" replete with misstatements, that largely relate to the lower tort trial rather than the rulings by the appellate court.

II. ARGUMENT

Following are replies to the five "questions presented" by *respondents*, in the order presented by them.

A.) JURISDICTION.

The respondents first raise the question of Supreme Court jurisdiction over this matter. The respondents argue by misstatement, that the petitioners failed to mention the existence of any federal constitutional provisions or issues at any level.

Most fundamentally, inverse condemnation is a federal constitutional provision and issue under eminent domain, and inverse condemnation was alleged and the issue of the underlying demurrer from which the appeal was made, and was argued at length at every level. The issue of inverse condemnation and the demurrer to it, is

the basis of the bulk of the petition. Second, the United States Constitution was specifically alleged as a basis for the action in inverse condemnation in the operative second-amended complaint. Third, the United States Constitution was argued in the petition for review to the California Supreme Court, as follows: "Moreover, if a public entity were to be allowed to damage land without compensating the aggrieved landowner, merely because he unsuccessfully offered the land for dedication, this would constitute an unlawful 'taking' in violation of the Fifth and Fourteenth Amendments of the United States Constitution ..." and "Such an important constitutional right cannot be lost as a result of an unsuccessful offer to dedicate land by a previous owner". *Petition for Review to the Supreme Court of California, pp. 7-8.* Fourth, in the third brief accepted by the Second District Court of Appeal, the petitioners argued "...[M]ay a government, under our United States and California Constitutions, be given carte blanche power to cause the destruction of their land, and even ultimately their homes and other improvements - with no compensation, merely because a previous owner once offered a pipe and its related 7 ½ ft. width per parcel of use easement for County dedication, and the entity then rejected the offer?" *Appellants Petition for Rehearing,* p. 24

More importantly, U.S. Supreme Court jurisdictional standards are established by Federal law, as follows: "Final judgments or decrees rendered by the highest court of a State in such a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where ... any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statues of, or any commission held or authority exercised under, the

United States" *28 U.S.C.S. §1257(a)* Here the respondents claim rights under the United States Constitution itself in eminent domain/inverse condemnation, due process and equal protection, and authority exercised under the United States as outlined, cited and argued at length in the petition. The issue of inverse condemnation, a federal as well as a state issue, has always been at the core of lower appeals and briefings.

Moreover, the United States Supreme Court "may intervene only to correct wrongs of constitutional dimension" and the Court's authority under section 1257 "is limited to enforcing the commands of the United States Constitution". *MuMin v. Virginia*, (1991) 500 U.S. 415, 422. Here, regarding the "wrongs of constitutional dimension" alleged *secondarily* in footnote 1 of the petition, the petitioners as U.S. Citizens, claim a violation of due process and equal protection provisions of the U.S. Constitution, *resulting from the appellate court ruling itself*, from which this petition is made. The same Due Process argument was previously made in briefing to the California Supreme Court.

B.) RES JUDICATA & COLLATERAL ESTOPPEL.

It is obvious that res judicata and collateral estoppel re: the subject trial court judgment or lower appellate rulings have no effect relative to review of such lower rulings by the United States Supreme Court. These doctrines can only bar the re-litigation of causes of action or issues at the trial court level. Under the respondent's argument, the Supreme Court would hold no power at all in the review of any lower court decisions.

C.) CALIFORNIA LAW vs. FEDERAL LAW.

It is again obvious, under the Supremacy Clause of the U.S. Constitution, that the U.S. Constitution and Federal Law are supreme in authority over any State Constitution or laws. Moreover, the respondents misstate the law of California, wherein the Supreme Court of California established strict liability in inverse condemnation damaging cases, as cited and quoted in the petition. *Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 263. The respondents also rely on a California appellate case, *Tilton v. Reclamation District* (2006)142 Cal.App.4th 848, whose river/levee facts bear no relationship to the non-riparian facts here. See similar arguments re: *Locklin*, infra (see II (E), below).

D.) "UNALTERED TOPOGRAPHICAL TERRAIN"

First, the respondents argue based upon a glaring misstatement of facts. The subject tract development which was constructed with *significant engineered regrading* of a *formerly* natural site, including leveled building pads, paved streets, curbs, gutters, drain inlets and pipes, as shown in the respondent's engineering plans, is far from "unaltered topographical terrain", and is actually *extensively altered* topographical terrain.

Second, this argument is irrelevant. Under the constitution, if a government takes or damages private land for a public purpose, they are liable in inverse condemnation, regardless of the "terrain".

E.) THE EFFECT OF REASONABLENESS.

First, re: reasonableness - the respondents wrongly reference a "petitioners attack upon the California *Supreme Court* decision". *Respondent's Brief in Opposition*, hereinafter "*RB*", pp.25-33 (emphasis added) Clearly, the petitioners attack is upon the *appellate* court ruling in *Skoumbas v. City of Orinda*,165 Cal.App.4th at 787. The petition cites and discusses *Skoumbas* on four pages, and clearly *distinguishes* it from the California Supreme Court decision in *Locklin* (infra). *Petition*, pp. 3, 13, 14, 15. Yet the respondents do not even mention the *Skoumbas* case, and revolve their discussion around *Locklin*.

The petitioners' argument that reasonableness cannot here license an inverse condemnation without just compensation, is consistent with the United States Constitution. There is no provision in the U.S. Constitution which permits a government to take or damage private land for a public purpose without just compensation, if it merely acts "reasonably". The violation of any constitutional mandate is not sanctioned, merely because said violation was done "reasonably". Strict liability applies here. Moreover, no federal case has ever held that mere reasonableness excuses the payment of just compensation when land is taken or damaged by a government.

The respondents argue, based upon a narrowly construed *California* Supreme Court case, *Locklin v. City of Lafayette* (1994) 7 Cal.4th 327, which is critically distinguished from the instant case as well as *Skoumbas* (supra). *Locklin* provides a reasonableness test in unique circumstances where the government has historically been

privileged to damage private land under specific *riparian* circumstances, as outlined in pp.13-15 of the petition. The respondents cite no provision in the U.S. Constitution, or Federal case law which supports such an argument. Critically, even regarding California Supreme Court - *the instant case is not riparian*, involving *no* river or stream.

III. ADDITIONAL RESPONDENT MISSTATEMENTS.

A.) The first section of drainpipe and the drain inlet, as well as the street abutting the plaintiffs' properties are admitted to be County facilities. The respondents misstate, rather, that the entire length of pipe up to the curb is private. The initial pipe section is public, as respondents have *repeatedly admitted*. *RB*, p.1, par.1.

B.) The respondents misstate that the "explosion which eroded the backyard hillside of the petitioners' homes was caused by the broken-off and corroded drainpipe dangling over the cliff". *RB*, p.2, par. 3. This is a misstatement. At trial, the respondents offered no proof of the preceding statement. The actual complaint allegations are quoted on page 18 of the petition, including, in part, "[t]he public water coming from the public facilities described in paragraph 9 above, was the actual and legal cause of the massive landslide on the plaintiffs' lands." *Second-amended Complaint*. Moreover, in a demurrer ruling, only the "four corners" of the complaint are relevant.

C.) *RB* wrongly states "[t]he County of Ventura never built, owned, modified, acquired, operated, or controlled any waterworks or water bearing facilities adjacent to or upstream from the petitioners' homes". *RB*, p.6 (emphasis

added) The respondents misstate that "there is no government source of water whatsoever in, on, or adjacent to the subject street leading to petitioners' homes." *RB* p.7, par.1 The *RB* continues to misstate against the clearly established facts of this case, stating that "On page 16 of the certiorari petition, it is stated that 'County admittedly used said private land and pipe for County public street drainage...' This is either a misstatement or a rhetorical ruse." *RB*, p.33, par.3 (emphasis added) Even further, the respondents misstate that "[a]t no time did the respondent ever admit 'using' private land or the private pipe for any County drainage. This **unsourced** admission is typical of periodic, unsourced misstatements attributing an admission of fault to the respondent which simply never occurred. The respondent in this case never admitted using the private land for government street drainage." *RB*, p.34, par.2. (emph. added)

However, the Appellate Opinion, as well as a plethora of admissions contained in the trial record as well as briefings by the defendants, all show that the above respondent statements were misstatements made to the U.S. Supreme Court, including in part:

> "At the time of subdivision map approval, *the* ***County accepted the developer's offer*** *to* ***dedicate the STREETS*** *within the subdivision* – Otero Court, Estaban Drive, and Corriente Court – ***for public use***, *including the drain openings and pipe inlets located within the area of the County's right-of-way*". *Appellate Opinion, Petition Appendix "A"*, p. 2a (emphasis added).

"Prior to sale of the lots in the subdivision, the developer installed an 18-inch corrugated metal drainpipe in the easement [on petitioners land]. *The purpose of the pipe was to* ***drain surface waters*** *from the* ***subdivisions STREETS*** *down the hillside* ***to publicly-owned facilities*** *draining to the ocean.* Subsequently, a single family residence was constructed on each of the lots". *Appellate Opinion, Petition Appendix "A"*, pp.2a-3a (emphasis added)

Incredibly, the respondent *in their instant brief* state "[t]he jury determined that the **County property**, *a slightly downsloping* ***STREET*** which ***the County had accepted*** from the developer ... and *a drain* between the street and petitioners' private drainpipe". *RB*, p. 3, par.4 (emphasis added)

"[P]atently obvious ... no one was disputing that ***the source of the water emanated from the STREET***." *Respondent's Appellate Brief*, hereinafter "*RAB*" p.57, par.2.

"The evidence at trial was that the downsloping ***STREET*** *leading to the plaintiffs' homes* ... " *RAB*, p.6, par.3.

"Downsloping ***STREET*** *leading to a drainpipe*" *RAB* p.8, par.2 (emphasis added)

"The ***County-owned*** **drain inlets, such as the one in the front curb face of** the **SUBJECT PARCELS**, serve an extremely

> beneficial function by providing a safe exit ***for water flowing along the STREETS***." (Note plural "streets") *RAB* p.16, par. 1 (emphasis added)

The above quotes evidence the respondents perpetual effort to create confusion at every level in this matter, including confusion re: the distinction between the privately sited pipe, and the *admittedly public street and drainage facilities*, part of which direct public drainage through the petitioners lands, and in so doing severely damaged the subject private lands.

D.) The respondents misstate that under California law, "all theories of liability involving adventitious surface water flow are analyzed under a State Supreme Court decision entitled *Locklin v. City of Lafayette*, 7 Cal.4th 327 (1994)". *RB* p.7, par.4. *Locklin* is narrow, entirely inapplicable here, and includes *two* fact patterns, both of which focally/critically involve a natural river/stream. There is no river or stream in the instant facts, as has been articulated to the respondents countless times. Please refer to a partial list of cases in the petition, sect.6, p.11, which establish the general surface water rule in inverse condemnation: strict liability per *Albers* (supra, p.3 above). See II (E.) above.

E.) Respondents take issue with the petition, "the certiorari petition claims that the County knew that the public street drainage system would trigger the destabilization of the subject properties". However, the trial record clearly reflects that the County Transportation Director, a licensed Civil Engineer, was fully aware of and documented a land failure very near the petitioner's

homes four years before the instant land failure, in this very tract, related to a County drainage system which said Transportation Director called "identical" to the respondent's drainage system which directs the damage causing public drainage onto the petitioners' lands.

IV. CONCLUSION

Contrary to the respondents arguments which largely focus on issue intricacies related to the lower court trial in tort and also rely upon misstatements, the constitutional issues presented to this court by the petitioners *all* stem from the rulings of the Court of Appeal. These petitioners have argued truthfully to this court, and implore this court to search for and see the truth here, and grant the Petition for a Writ of Certiorari.

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Respectfully submitted,

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